

# Trust, “wage theft” and wages growth

Remarks by Natalie James  
Former Commonwealth Fair Work Ombudsman  
Partner, Deloitte  
Chair, Victorian Inquiry into the On-Demand Workforce

To Launch *The Wages Crisis In Australia:  
What it is and what do to about it*  
Edited by Andrew Stewart, Jim Stanford and Tess Hardy  
At Melbourne Law School, 29 November 2018

---

It’s a pleasure and an honour to have been asked to launch *The Wages Crisis in Australia*.

Much has been asserted, written, blogged and tweeted about the reasons for the record low wages growth we have experienced since 2012.

By and large occupying the realm of economists, the collective orthodoxy of those from that school is we must trust that the 'systems' will deliver... in time.... The ‘slackness’ in the labour market will rectify and normal wage growth will resume when the labour market tightens, supply and demand rebalances....

Here is where I feel I must make my disclaimer - I’m a lawyer, not an economist.

My perspective is shaped by my experience rattling around Industrial Relations for 20 years.

As a crafter of laws and adviser to government.

As the regulator responsible for ensuring that whatever wages are due, those wages are paid.

As the 'employing authority' responsible for wages of the employees of the Fair Work Ombudsman within the Australian Public Service's bargaining framework.

Trusting and waiting is not the usual modus operandi in workplace relations. More commonly, the usual suspects take their places on opposite sides of an issue with a list of demands for action. And while some have called for action, wages growth cannot be 'fixed' through a simple change in the law or directive to a single institution to behave differently.

The official response to what everyone agrees is a problem has been to acknowledge there is a challenge, but to ask us to demonstrate patience.

And so we have waited.

As quarter after quarter, wage growth has continued to remain flat with only the most meagre signs of recovery in recent months.

As the Reserve Bank Governor said in a speech just last week, this has contributed to the erosion of trust in the community that our system will deliver improved living standards over time. And doubt that everyone in the community will share in the country's economic success.

Another disturbing trend that emerged in relation to wages that has eroded trust in the system has been what some call "wage theft".

We have seen in recent times shocking stories of unlawful underpayment of vulnerable workers, including by large, established and profitable businesses.

The outcomes of Fair Work Ombudsman's audits last financial year found an overall compliance rate of 54%. Little over half those checked were getting it right. Of those failing to meet their obligations, 40% were underpaying workers their base rates of pay. Another 11% weren't paying the appropriate penalty rates.

In some high risk sectors, a culture of defiant non-compliance has pushed the going rate down below lawful rates of pay. And it's generally young or migrant workers who are on the receiving end of these black market rates

There are 2 questions that I ponder about the interaction between underpayment of workers and wages growth.

The first: we do not really know the prevalence of underpayment of workers in Australia or how it is trending. There is no doubt that headlines about 'wage theft' have been more prominent. And we have seen record penalties being handed down by the courts, reflecting the aggravated circumstances of the cases being brought by the regulator. So too, community outrage about these injustices has justifiably grown

But I know of no research that considers the extent of underpayment or whether more people are being underpaid today than ten years ago. Overall, the number of people lodging complaints to the FWO has been reasonably steady over the last 10 years.

And so while we may theorise, and I'm happy to partake in a discussion about it over a drink shortly.... I am hesitant to draw definitive conclusions.

And this brings me to my second question:

Where is all this underpayment of minimum wages in the Wage Price Index data? I understand this data is based on surveys - employers are asked what they pay. I'm not sure whether those who are underpaying their workers chose the ABS questionnaire as the opportunity to clear their conscience and confess they are breaking the law.

If a business is paying workers \$15 an hour, it's unlikely to be promptly and accurately passing on the annual wage review no matter what the quantum.

Another issue that has emerged over the same period is the decline of bargaining. Initially embraced as a means of achieving increased productivity, higher wages and greater flexibility, people have lost faith that this system can deliver these outcomes.

If we consider just these three factors together – low wage growth, underpayment of workers and the decline of bargaining...it feels like the system is straining and fraying around critical determinants of workers' take home pay. And so too, trust that the system can deliver for everyone in the community is suffering.

And what has been the response? We saw a regulatory intervention from the Government through the passage of the measures in the Protecting Vulnerable Workers Bill. This has increased the penalties and powers available to the Fair Work Ombudsman.

But we have not seen any concrete proposals to address concerns about the bargaining system or wage growth.

It was into this space that this diverse group of eminent, curious experts boldly stepped.

They came together of their own accord early this year to explore the issues impacting on wages growth and see if they could come up with solutions.

After a day of energetically sharing their perspectives and theories and workshopping possible solutions, they discussed over dinner how they might make a lasting, constructive contribution to the debate.

The outcome is this book –a multi-disciplinary piece that is highly readable and thoughtful. It avoids the shrill, simplistic slogans that sometimes characterises the debate about workplace relations.

The analysis is comprehensive and nuanced, with fresh thinking that builds on economic and policy orthodoxies but also considers them

in a broader context. They look to the structural and institutional backdrops, to the international and the local.

Across twenty chapters, the contributors contemplate the impact of economic forces, gender equity, exploitation of vulnerable workers, trends in the structure of businesses, the approach to wage setting, the dynamics of the award 'safety net' and bargaining, the impact of increased numbers of workers on temporary visas with work rights, policies and funding of public and community sector workers and investment drivers as well as the frameworks contained in the Fair Work Act.

While you may expect a book covering such topics to be somewhat dry or even a little grim, I can attest to the fact that it is a pleasure to read...and even entertaining. Kicking off with the stark imagery in the opening passages asking us to imagine our Reserve Bank Governor spiking the punch at the Christmas party in an attempt to jump start the waning wages party.

You don't need a degree in economics to appreciate the reasoning in this book – just an open and curious mind. You don't need to agree with every conclusion to appreciate the ideas or their value. So do yourself a favour and slip it into your holiday reading.

The editors, Professor Andrew Stewart, Dr Tess Hardy and Dr Jim Stanford have done a stellar job not just in drawing out the key themes but lifting the discussion up further, drawing on the those wise and well researched pieces.

They conclude that the time for waiting is over. That we would be in error to simply trust that the system will correct and deliver fair outcomes. They propose a multi-faceted agenda for reform involving legal and non-regulatory actions. Their proposals are worthy of serious consideration by policy makers.

It is a credit to those involved that they have seen the need and the opportunity and stepped into this space.

Even more extraordinary is that, having put their time into constructing such a useful piece, they are releasing the book online. Available to anyone who is interested to access. For free.

So in launching “The Wages Crisis in Australia”, I thank the various authors for taking the time to apply their intellect and expertise to this critical issue for our economy and our community. I commend it to everyone and suggest that the policy makers in Canberra put it on their Christmas list.